

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 25 March 2004

Case No.: 2003-BLA-5827

In the Matter of:

MELBA J. ODOM, Surviving
Widow of LONNIE ODOM, SR.,
Claimant

v.

PEABODY COAL COMPANY,
Employer

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest

APPEARANCES:¹

Melba J. Odom, Pro se
Claimant

Philip J. Reverman, Esq.
For the Employer

BEFORE: Robert L. Hillyard
Administrative Law Judge

DECISION AND ORDER - DENIAL OF BENEFITS

This proceeding arises from a claim filed by Melba J. Odom for benefits under the Black Lung Benefits Act of 1977, 30 U.S.C. §§ 901, *et seq.*, as amended ("Act"). In accordance with the Act, and the regulations issued thereunder, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs, for a formal hearing.

Benefits under the Act are awarded to persons who are totally disabled within the meaning of the Act due to pneumoconiosis, or to the survivors of persons who were totally

¹ The Director, OWCP, was not represented at the hearing.

disabled at the time of their death or whose death was caused by pneumoconiosis. Pneumoconiosis is a dust disease of the lungs arising out of coal mine employment, and is commonly known as black lung.

A formal hearing in this case was held in Madisonville, Kentucky on December 9, 2003. Each of the parties was afforded full opportunity to present evidence and argument at the hearing as provided in the Act and the regulations issued thereunder, which are found in Title 20 of the Code of Federal Regulations. Regulation section numbers mentioned in this Decision and Order refer to sections of that Title.

The findings and conclusions that follow are based upon my observation of the appearance and the demeanor of the witness who testified at the hearing, and upon a careful analysis of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent case law.

I. Statement of the Case

The Claimant, Melba J. Odom, filed a claim for black lung benefits pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, on February 13, 2002 (DX 3).² A Notice of Claim was issued on March 18, 2002, identifying Peabody Coal Company, as the putative responsible operator (DX 15). On April 15, 2002, the Employer filed its Response to Notice of Claim (DX 17), and on April 17, 2002, the Employer filed its Controversion (DX 18). The District Director, OWCP, made an initial determination of entitlement (DX 22). The Employer requested a formal hearing and the claim was referred to the Office of Administrative Law Judges on April 29, 2003 (DX 25).

A hearing was held in Madisonville, Kentucky on December 9, 2003, before the undersigned Administrative Law Judge.

² In this Decision, "DX" refers to the Director's Exhibits, "CX" refers to the Claimant's Exhibits, "EX" refers to the Employer's Exhibits and "Tr." refers to the transcript of the December 9, 2003 hearing.

II. Issues³

The controverted issues as listed on Form CM-1025 are as follows:

1. Whether the Miner's death was due to pneumoconiosis; and,
2. The remaining issues set forth in paragraph 18, as well as the issues as to constitutionality of the Act and its regulations are preserved for appeal purposes.

III. Findings of Fact and Conclusions of Law

The Miner, Lonnie W. Odom, Sr., was born on May 23, 1929 and died on January 1, 2002 at the age of 72 (DX 3). No autopsy was performed on the Miner (DX 3). The Claimant, Melba J. Odom, is the surviving widow of Lonnie Odom (DX 3). In a Decision and Order dated September 11, 1997, Mr. Odom was awarded benefits in his living miner's claim and he was receiving benefits at the time of his death (DX 1).

Coal Mine Employment

The determination of length of coal mine employment must begin with § 725.101(a)(32)(ii), which directs an adjudication officer to ascertain the beginning and ending dates of coal mine employment by using any credible evidence.

In the previous living Miner's claim, Mr. Odom was found to have 20 years of coal mine employment. The Employer does not contest length of employment and after review of the Miner's claim, I credit the Miner with 23 years of coal mine employment as stipulated (Tr. 11).

The Claimant's last employment was in the Commonwealth of Kentucky. Therefore, the law of the Sixth Circuit is controlling.

Responsible Operator

Peabody Coal Company has withdrawn its challenge to the issue of responsible operator, and I find that Peabody Coal

³ At the hearing, controversion was withdrawn to the issues of pneumoconiosis, pneumoconiosis caused by coal mine employment, and responsible operator. The parties stipulated to 23 years of coal mine employment (Tr. 11).

Company is properly named as responsible operator pursuant to §§ 725.494, 725.495 (Tr. 11).

IV. Medical Evidence

Narrative Medical Evidence⁴

1. The record contains extensive treatment notes dating from 1980 through 2001 from Dr. William C. Houser at the Black Lung Clinic, Deaconess Hospital, Evansville, Indiana (DX 13). Dr. Houser lists no specialty medical credentials in the record. While Dr. Houser consistently diagnosed chronic obstructive pulmonary disease and coal workers' pneumoconiosis in his treatment notes from 2000 on, he does not list an etiology for the COPD, nor does he offer any analysis as to the cause of the Miner's death.

2. Dr. Valentino Simpao, who lists no medical specialty credentials, examined the Miner on October 27, 1993. He diagnosed chronic obstructive pulmonary disease based upon x-ray interpretation and pulmonary function study results. As the examination was performed several years before the Miner died, Dr. Simpao offered no opinion regarding cause of death.

3. Dr. Richard A. Murrell, who lists no medical specialty credentials, examined the Miner after bypass surgery on January 4, 1993 (CX 1). Dr. Murrell noted shortness of breath due to "Black Lung disease" and noted Mr. Odom's improving condition following surgery. He offered no opinion regarding cause of death.

4. Dr. Mohit K. Sheth, who lists no medical specialty credentials in the record, examined the Miner on October 18, 2001 (CX 2). Dr. Sheth noted a previous history of CAD, COPD, and bypass surgery, and opined that the Miner's chest was clear and the patient was stable. He offered no opinion regarding cause of death.

5. Dr. Ben V. Branscomb, a Board-certified Internist, performed a records review at the request of the Employer (EX 1). In review, Dr. Branscomb agreed that the Miner suffered from disabling chronic pulmonary disease. He opined, however,

⁴ X-rays, pulmonary function studies, and arterial blood gas studies can be used to establish pneumoconiosis and disability in a living miner's claim. Sections 718.202, 718.204. In this case, pneumoconiosis has been conceded by the Employer. Such evidence alone, however, is ineffective in establishing death due to pneumoconiosis. Section 718.205. Accordingly, I incorporate the objective testing data in the record into this Decision and Order by reference.

that the cause of the chronic obstructive pulmonary disease was asthma. He determined that a small but significant stable component of the Miner's impairment was attributable to coal mine dust. The clinical data, however, did not show that pneumoconiosis contributed to or hastened death. He opined that the records showed no significant deterioration in lung function which might have contributed to death. Arterial blood gas studies showed minimal and stable DLCO changes. The reversibility of the impairment as shown through inconsistent pulmonary function results and through the improvement in pulmonary function after bronchodilation mitigated against a pneumoconiosis-related condition that hastened death.

6. The Commonwealth of Kentucky Certificate of Death lists the immediate cause of death as probable acute myocardial infarction, sudden. There are no contributing causes of death listed. The Certificate was completed by Randy Fish, a Deputy Coroner for Union County, Kentucky.

V. Discussion and Applicable Law

The Claimant filed her black lung benefits claim on February 13, 2002 (DX 3). Because this claim was filed after March 31, 1980, the effective date of Part 718, it must be adjudicated under those regulations.⁵

Death Due to Pneumoconiosis

Section 718.205(a) requires that a survivor prove that the Miner suffered from pneumoconiosis. Additionally, in *Trumbo v. Reading Anthracite Co.*, 17 B.L.R. 1-85 (1993), the Board held that, in a survivor's claim under Part 718, the Administrative Law Judge must make a threshold determination as to the existence of pneumoconiosis under 20 C.F.R. § 718.202(a) prior to considering whether the miner's death was due to pneumoconiosis. Pneumoconiosis was established in the living miner's claim and the issue of pneumoconiosis in this case has been conceded by the Employer. Accordingly, I find that the Claimant has established pneumoconiosis.

Under Section 718.205(c), a claimant may establish death due to pneumoconiosis in any of the following circumstances: (1) where competent medical evidence establishes that the miner's death was due to pneumoconiosis; (2) where pneumoconiosis was a

⁵ Amendments to the Part 718 regulations became effective on January 19, 2001. Section 718.2 provides that the provisions of § 718 shall, to the extent appropriate, be construed together in the adjudication of all claims.

substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis; or (3) where the presumptions set forth at § 718.304 are applicable. I find that the presumptions of § 718.304 regarding complicated pneumoconiosis are not applicable to this claim.

The United States Court of Appeals for the Sixth Circuit has held that a condition that hastens death in any way is a substantially contributing cause of death for purposes of § 718.205. *Brown v. Rock Creek Mining Corp.*, 996 F.2d 812 (6th Cir. 1993); *Griffith v. Director, OWCP*, 49 F.3d 184 (6th Cir. 1995).

For a physician's opinion to be accorded probative value, it must be well reasoned and based upon objective medical evidence. An opinion is reasoned if it contains underlying documentation adequate to support the physician's conclusions. See *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19, 1-22 (1987). Proper documentation exists where the physician sets forth the clinical findings, observations, facts, and other data on which the diagnosis is based. *Id.* A brief and conclusory medical report which lacks supporting evidence may be discredited. See *Lucostic v. United States Steel Corp.*, 8 B.L.R. 1-46 (1985); see also, *Mosely v. Peabody Coal Co.*, 769 F.2d 357 (6th Cir. 1985). Further, a medical report may be rejected as unreasoned where the physician fails to explain how his findings support his diagnosis. See *Oggero v. Director, OWCP*, 7 B.L.R. 1-860 (1985).

The record contains six medical narratives. The opinions of Drs. Houser, Simpao, Murrell, and Sheth do not address the issue of death due to pneumoconiosis. An opinion which is silent as to an issue is not probative of that issue. See, e.g., *Island Creek Coal Co. v. Compton*, 211 F.3d 203 (4th Cir. 2000). Accordingly, I give no probative weight to the opinions of these physicians on the issue of death due to pneumoconiosis.

The Commonwealth of Kentucky Certificate of Death lists "probable acute myocardial infarction, sudden," as the immediate cause of death. A death certificate, in and of itself, is an unreliable report of the Miner's condition and it is error for an Administrative Law Judge to accept conclusions contained in such a certificate where the record provides no indication that the individual signing the death certificate possessed any relevant qualifications or personal knowledge of the miner from which to access the cause of death. *Smith v. Camco Mining, Inc.*, 13 B.L.R. 1-17 (1989); *Addison v. Director, OWCP*, 11 B.L.R. 1-68 (1988).

The Certificate of Death was completed by a Deputy Coroner who shows no knowledge of the Miner except for his completion of this Certificate. As Mr. Fish's qualifications are not in the record, as he appears to have had no knowledge of the Miner other than his examination to complete the Certificate of Death, and as Mr. Fish does not list coal workers' pneumoconiosis or any other form of legal or clinical pneumoconiosis on the certificate of death, I find that the Commonwealth of Kentucky Certificate of Death offers no support towards a finding of death due to pneumoconiosis.

Dr. Branscomb opined that the Miner suffered from chronic pulmonary disease with a small, significant stable component of that disease caused by coal mine dust. He opined, however, that the objective testing of record did not support a finding that the small coal dust component hastened death. He utilized physical examination and x-rays to show that the Miner exhibited no significant deterioration in lung function prior to death. He further incorporated arterial blood gas studies which showed minimal oxygenation problems and pulmonary function studies which (even when considered invalid) showed improvement in the Miner's condition after bronchodilation. Given the reversibility of the impairment, and given the minimal impact on lung function and blood oxygenation, Dr. Branscomb opined that the Miner's chronic pulmonary condition was too clinically negligible to have hastened the Miner's death.

Dr. Branscomb's opinion is well reasoned. He utilized the objective evidence of record to determine that the Miner's clinical impairment, while chronic, was too negligible to have hastened death. Noting Dr. Branscomb's superior credentials as a Board-certified Internist, I afford his opinion greater weight in support of a finding that the Miner's death was not due to pneumoconiosis.

The Claimant has the burden to prove every element of entitlement by a preponderance of the evidence. See *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). The opinions of Drs. Houser, Simpao, Murrell, and Sheth offer no opinion on the Miner's cause of death. The Commonwealth of Kentucky Certificate of Death was completed by a Deputy Coroner with no established credentials and no established knowledge of the Miner's condition preceding death. As such, it also provides no support for the Claimant. Dr. Branscomb provided a well-reasoned opinion that the Miner's death was not hastened by his pneumoconiosis. The Claimant has failed to prove by a preponderance of the evidence that the Miner's death was hastened by his ongoing pneumoconiosis. As such, her claim must fail.

VI. Entitlement

Melba J. Odom, the Claimant, has not established entitlement to benefits under the Act.

VII. Attorney's Fee

The award of an attorney's fee is permitted only in cases in which the claimant is found to be entitled to benefits under the Act. Since benefits are not awarded in this case, the Act prohibits the charging of any fee to the Claimant for representation services rendered in pursuit of the claim.

VIII. ORDER

It is, therefore,

ORDERED that the claim of Melba J. Odom for benefits under the Act is hereby DENIED.

A

Robert L. Hillyard
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty (30) days from the date of this Decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C., 20013-7601. A copy of a Notice of Appeal must also be served upon Donald S. Shire, Esq., 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C., 20210.